**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1354/2002.

AJAY GUPTA
v
MAHENDRA KUMAR GUPTA & ANR.

Date of Judgment: 8th September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. S.R.Yadav, for the appellant.
Mr. Sunil Khandelwal for
Mr. Kunal Rawat for the respondents.

By Court:

The appellant-defendant has challenged the order dated 19.3.02 passed by the Addl. District Judge No.2, Jaipur City, Jaipur by which the provisional rent was determined.

The brief facts of the case are that the plaintiff-respondent filed a suit for ejectment against the appellant before the learned trial court. It was contended that the plaintiff had let out a shop at a rent of Rs. 2,200/- and two rooms with attached latrine and bathroom for a rent of Rs. 2,000/- per month to the appellant. It was further claimed that the rent for the room was not paid with effect from 1.10.99 and the rent for the shop has not been paid with effect from April, 2000. The

appellant in his written statement denied the averments made by the plaintiff-respondents. The appellant claimed that the suit premises are on a rent for Rs. 2,200/- per month and no separate rent had to be paid for two rooms and the attached latrine and bathroom. He further claimed that he has been depositing the rent through cheques in the saving account of the plaintiff-respondents. He gave specific details of the payment of the rent made by him in para 8 of the written statement. However, despite the clear averments of the appellants, vide order dated 19.3.2002, the learned trial court decided the provisional rent and directed the appellant to pay Rs. 53,509/- as the outstanding rent for the shop from April,2000 to February, 2002 and to further make a payment of Rs. 62,205/- as outstanding rent due for the two rooms from 1.10.99 to February, 2002. Hence this appeal before this Court.

Mr. S.R. Yadav, learned counsel for the appellant, has contended that the appellant has been paying the rent by cheques in the name of the respondent No.2, from 11.4.2000 till 28.2.2002. Therefore, the statement of the respondent about the non-payment of the rent is untrue. In order to substantiate

his case, he has submitted a copy of the statement of his Bank account before us.

Mr. Sunil Khandelwal, learned counsel for the respondent has denied the payment of the rent and has claimed that there is no proof to show that the said amount withdrawn from the accouont of the appellant were in fact being deposited in the account of the respondent No.2. Since it was necessary to co-relate the withdrawal and the deposit, this Court directed Mr. Sunil Khandelwal to produce the statement of savings bank account No. 00997 at Central Bank in Vaishali Nagar, Jaipur which is in the name of respondent No.2. Mr. Sunil Khandelwal has filed the bank statement through an affidavit signed by the respondent.

We have heard both the learned counsels and have perused the bank statements.

A bare perusal of the impugned order clearly reveals that the learned Judge has noted the fact that according to the appellant the rent was being deposited through cheques. However, the learned Judge has held that the respondent could not prove that these cheques were being

deposited in the bank account of the plaintiff. Therefore, he has not believed the appellant's statement. However, before this Court, the respondent has produced the bank statement which clearly reveals that cheques of the same amount namely of Rs. 2,200/- were deposited on 19.4.2000, 16.6.2000, 1.8.2000, 1.2.2001, 1.3.2001, 30.4.2001, 23.6.2001, 12.9.2001, 19.9.2001, 13.10.2001, 1.12.2001, 24.12.2001, 31.1.2002, 21.2.2002, and 28.2.2002. When Mr. Sunil Khandelwal was asked to explain as to from where this amount was coming, he feigned ignorance. However, since pass-book of Smt. Santosh Khandelwal, the respondent No.2 clearly shows that Rs. 2,200/- have been deposited from 16.6.2002 to 28.2.2002, we direct the trial court to re-determine the amount of rent due from the appellant to the plaintiff-respondent. The respondent is directed to submit the copy of the pass-book of Smt. Santosh Khandelwal before the trial court. The trial court is directed to re-calculate the amount due after considering the bank statement as shown in the pass-book of Smt. Santosh Khandelwal and to pass its order within a period of one month from the date of receipt of the certified copy of this judgment.

With these observations this appeal is allowed.

(R.S. CHAUHAN) J.

MRG.